

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiff,

- against -

DEPARTMENT OF THE ARMY,

Defendant.

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16 Civ. 03123 (JSR)

**THIRD DECLARATION OF DAVID E. MCCRAW
IN SUPPORT OF PLAINTIFF’S CROSS-MOTION
FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT**

I, DAVID E. MCCRAW, state and declare as follows under penalty of perjury:

1. I am a Vice President and Assistant General Counsel of The New York Times Company (“The Times”), publisher of *The New York Times* newspaper and nytimes.com. I am duly licensed to practice law in the State of New York and before this Court and serve as counsel of record for The Times. I make this declaration from my own personal knowledge and a review of publicly available Government documents and in opposition to Defendant’s motion for summary judgment and in further support of Plaintiff’s cross-motion for summary judgment.

2. The purposes of this Declaration is to provide the Court with updated versions of the redacted Government documents that Plaintiff submitted to the Court on December 12, 2016. We are doing so because the Government has now further reviewed the documents and decided to disclose additional sections.

3. On December 12, 2016, with the Court's permission, Plaintiff entered into the record of this case three partially redacted documents pertaining to the existence of chemical weapons in Iraq (the "CIA Documents"). Those documents had been produced by the Central Intelligence Agency ("CIA") in the course of related litigation, *N.Y. Times v. CIA*, 16-cv-3098 (JSR) (S.D.N.Y.) (the "CIA Litigation").

4. Those three documents were: (1) a CIA report entitled "Iraq: Recovered Pre-1991 Mustard Rounds May Pose Localized Chemical Threat" and dated Dec. 4, 2006 ("December 2006 CIA Report"); (2) a CIA report entitled "Iraq: US Forces Experience First Sulfur Mustard-Related Injuries" and dated Mar. 22, 2007 ("March 2007 CIA Report"); and (3) a CIA report entitled "Iraq: Recovered CW Munitions Probably Are Remnants of Pre-1991 CW Program" and dated Aug. 9, 2007 ("August 2007 CIA Report").

5. The Times and counsel for the CIA continued to confer on a possible settlement of the CIA Litigation. As a result of those negotiations, the CIA produced copies of the CIA Documents with fewer redactions on December 16, 2016.

6. The Times then sought permission of the Court to enter the new versions of the CIA Documents in the record for this case. The Court granted that request during a telephone conference with the parties on December 19, 2016.

7. To aid the Court in its review, I note below the differences between the copies of the CIA Documents that The Times provided the Court on December 12 and the less-redacted copies appended to this declaration.

8. A true and correct copy of the December 2006 CIA Report, as received on December 16, 2016, is attached as Exhibit 1. On pages 1, 2, and 4, the CIA has provided: (1) additional detail about the specifications and nature of the chemical weapons at issue and (2)

further detail about the destruction of chemical weapons in Iraq, including the identity of the organizations that carried out the destruction activity.

9. A true and correct copy of the March 2007 CIA Report, as received on December 16, 2016, is attached as Exhibit 2. On page 1, the CIA has provided: (1) additional details about injuries to U.S. military personnel likely caused by exposure to chemical munitions and (2) the specifications of chemical weapons projectiles at issue. The CIA has also removed the redaction from much of the legend to the map on page 4.

10. A true and correct copy of the August 2007 CIA Report, as received on December 16, 2016, is attached as Exhibit 3. As produced by the CIA, the report did not include the omitted pages. On page 1, the CIA has now disclosed the citation in footnote a and most of a previously redacted paragraph about the 2004 recovery and analysis of a cache of chemical weapons warheads. On page 13, the CIA has largely removed the redaction from four bullet points detailing four instances—in 2004, 2006, and 2007—where chemical weapons munitions likely were converted into improvised explosive devices. Those bullet points had been redacted in full. On pages 17 and 18, the CIA has disclosed almost all of Appendix A, which had been redacted in full. The appendix outlines and examines the history of Iraq's interest in chemical weapons since 1991. On pages iii, 5, 11, 14, the CIA has now disclosed the identity of the United Nations Special Commission as an organization involved in the inspection and destruction of chemical weapons in Iraq. On pages 13 and 21, the CIA has provided more detail about the specifications and nature of certain chemical weapons.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
December 22, 2016

/s/ David E. McCraw